

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KISCHE USA LLC, a Washington limited  
liability company,

Plaintiff,

V.

ALI SIMSEK and JANE DOE SIMSEK,  
husband and wife, and the marital community  
composed thereof; DIANE WALKER and  
JOHN DOE WALKER, husband and wife, and  
the marital community composed thereof; JD  
STELLAR LLC, a Washington limited liability  
company; and KEVIN COSTANZA and JANE  
DOE COSTANZA, husband and wife, and the  
marital community composed thereof;

Defendants.

No.

**VERIFIED COMPLAINT**

**JURY DEMAND**

Plaintiff KISCHE USA LLC, by and through its attorney of record, Dubs A. T.  
Herschlip of Dubs Ari Tanner Herschlip, PLLC, and submits the following complaint for  
damages and equitable relief against Defendants ALI SIMSEK and JANE DOE SIMSEK,  
husband and wife, and the marital community composed thereof; DIANE WALKER and  
JOHN DOE WALKER, husband and wife, and the marital community composed thereof; JD  
STELLAR LLC, a Washington limited liability company; and KEVIN COSTANZA and

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JANE DOE COSTANZA, husband and wife, and the marital community composed thereof;  
as more fully set forth below:

### **I. DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues, counts, claims and allegations contained within this Complaint or to be pleaded in the future, if necessary.

### **II. JURISDICTION AND VENUE**

2.1 This action is brought under § 43 of the Lanham Act, 15 U.S.C. § 1125(a) for Unfair Competition and False Description, under the Civil Racketeer Influenced and Corrupt Organizations Act (RICO) codified under 18 U.S.C. §1964, and under various other Washington common law doctrines and/or statutes including Passing Off, Trade Secret Misappropriation, Conversion, Breach of Fiduciary Duty, Breach of Contract, Injury to Business Reputation, Intentional Interference with Contractual Relations, Business Opportunity Fraud Act under § 19.110 RCW and Uniform Trade Secrets Act under § 19.108 RCW.

2.2 This court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121.

2.3 This action is also brought for Attorney Malpractice against Defendant KEVIN COSTANZA under the theories of negligence, breach of fiduciary duty, and breach of contract.

2.4 Plaintiff's claims brought under Washington law are so related to Plaintiff's federal claims, over which this Court has original jurisdiction, that they form part of the same case or controversy. Under Article III of the United States Constitution, this Court has supplemental jurisdiction over the state law tort claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

2.5 Venue is proper under 28 U.S.C. §§ 1391(a) because all of the Defendants are subject to personal jurisdiction in this district at the time the action is commenced, and under

28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to the claims occurred in this district, a substantial part of the property that is the subject of the action is situated in this district, and the Defendants maintain their residence, domicile and principal place of business in this district.

### III. PARTIES

3.1 Defendant, ALI SIMSEK, is a competent adult, and at all relevant times, is and was a resident of Washington State. ALI SIMSEK was employed by and last served as the manager of Plaintiff KISCHE USA LLC. ALI SIMSEK participated in each of the wrongful acts, omissions and conduct described below and/or had actual and/or constructive notice of the wrongful acts, omissions and conduct perpetrated upon Plaintiff, as set forth below. At all times, ALI SIMSEK had both the authority and duty to prevent and correct the same, and by his conduct condoned, supported and ratified such wrongful acts, omissions and/or conduct described herein.

3.2 Defendants, ALI SIMSEK and JANE DOE SIMSEK, are husband and wife and form a marital community under the laws of the State of Washington. All acts by either were done on behalf of and in furtherance of their marital community.

3.3 Defendant, DIANE WALKER, is a competent adult, and at all relevant times, is and was a resident of Washington State. DIANE WALKER was employed by Plaintiff KISCHE USA LLC. DIANE WALKER participated in each of the wrongful acts, omissions and conduct described below and/or had actual and/or constructive notice of the wrongful acts, omissions and conduct perpetrated upon Plaintiff, as set forth below. At all times, DIANE WALKER had both the authority and duty to prevent and correct the same, and by his conduct condoned, supported and ratified such wrongful acts, omissions and/or conduct described herein.



1           4.2     ALI SIMSEK and DIANE WALKER have committed the following crimes of  
2 racketeering under the Racketeer Influenced and Corrupt Organizations Act (RICO) codified  
3 under 18 U.S.C. §§1961-1968: counterfeiting, theft from interstate shipments, embezzlement,  
4 interference with commerce, and international and interstate transportation of stolen property.  
5 ALI SIMSEK and DIANE WALKER have sold for a profit stolen clothing, designs and  
6 marks of their prior employer, KISCHE USA LLC (hereinafter "KISCHE"). This stolen  
7 apparel was transported from international manufactures through customs and into the United  
8 States and was sold so as to appear as the brand and mark of his former employer, KISCHE.  
9 ALI SIMSEK embezzled money from his former employer by taking money which he did not  
10 earn, stealing apparel, designs and marks and using the money and stolen goods to start up an  
11 identical business, JD STELLAR to confuse and deceive customers into believing that the  
12 clothing was KISCHE clothing.  
13

14           4.3     ALI SIMSEK and DIANE WALKER have committed the crime of Trafficking  
15 in counterfeit goods or services under 18 U.S.C. §2320. Ali purposefully and knowingly  
16 shipped internationally stolen apparel, designs and marks into the United States.

17           4.4     ALI SIMSEK and DIANE WALKER have committed the crime of making a  
18 false claim to U.S. Customs and Border Patrol Officers upon importing stolen goods into the  
19 United States as codified under the False Claims Act (31 U.S.C. § 3729). Ali purposefully and  
20 knowingly shipped internationally stolen apparel, designs and marks into the United States  
21 without putting U.S. Government officials on notice of the stolen goods nor making adequate  
22 payment for importation thereof.

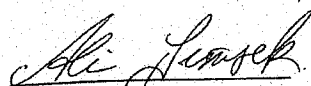
23           4.5     ALI SIMSEK and DIANE WALKER have committed the crime of falsification  
24 of statements to the United States Government as codified under 18 U.S.C. § 1001. They  
25 purposefully and knowingly shipped internationally stolen apparel, designs and marks into the  
26 United States without putting U.S. Government officials on notice of the stolen goods nor  
27 making adequate payment for importation thereof.  
28

1           4.6     Plaintiff, MEHMET UYSAL is a successful entrepreneur and businessman from  
 2 Turkey and the owner and primary member of KISCHE, a women's clothing importer.  
 3 KISCHE, a Washington limited liability company since April 24, 2007, imports fashions from  
 4 producers in Turkey and sold to prominent retailers in the U.S., including Nordstrom, T.J.  
 5 Maxx, and others.

6           4.7     Mr. Uysal was careful to protect KISCHE's intellectual property; on April 9,  
 7 2007, (prior to forming Kische USA LLC) Mr. Uysal registered the domain name  
 8 "kische.com." On October 4, 2007, Kische registered the trademark "Kische." On May 17,  
 9 2011, Kische registered the trademark "Marseille."

10           4.8     Mr. Uysal hired Defendant Ali Simsek to serve as "Chief Executive Manager"  
 11 of Kische sometime after the company was formed.

12           4.9     A notarized operating agreement was signed by the Defendant, Ali Simsek and  
 13 the Plaintiff, Mr. Uysal on February 8, 2010. See Exhibit 1, the Operating Agreement  
 14 provided in pertinent part:  
 15

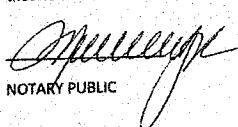
16  
 17   
 18 By Ali J. Simsek, Chief executive Manager

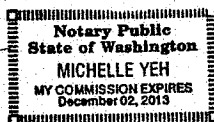
19 KING COUNTY

20 SS:

21 WA

22 Subscribed and sworn to before me, on this 8<sup>th</sup> day of February 2010, by Ali J. Simsek,  
 23 who proved to me on the basis of satisfactory evidence to be the individual who  
 24 appeared before me, and who executed the foregoing instrument and acknowledged  
 25 that he executed the same.

26  
 27   
 28 NOTARY PUBLIC



1           4.10     The operating agreement defined, among other things, the role that ALI  
 2 SIMSEK was to take as the Chief Executive Manager. In relevant part, section 4.2 states,  
 3  
 4

1 “[t]he Chief Executive Manager shall not employ the Company’s funds, property and other  
 2 assets except for the exclusive benefit of the Company, [or] attempt to obtain an advantage in  
 3 the Company’s affairs by engaging in any form of misconduct, misrepresentation,  
 4 concealment or threats.”

5  
 6 4.11 In addition, section 4.3 specifies a list of limitations upon the authority of ALI  
 7 SIMSEK as the Chief Executive Manager, for which there must be “prior written approval by  
 8 the members, including: “[a]ny act, transaction, or occurrence not in the course of the  
 9 Company’s ordinary business....” See Exhibit 1 which provides in part:

10 “4.2 Duties of Chief Executive Manager.  
 11 Subject to seeking the Initial Member’s prior written  
 12 approval for certain transactions set forth at 4.3.  
 13 hereinbelow, which approval the Initial Member may or  
 14 may not grant, the Chief Executive Manager in the exercise  
 15 of his management powers, shall run the day to day  
 16 business of the Company.”

17 4.12 Further, ALI SIMSEK while employed by KISCHE, registered JD STELLAR  
 18 and worked there seeking gainful employment in a directly competitive business of women’s  
 19 fashion, in direct contradiction to the clause in the operating agreement under 4.2.1 “Full time  
 20 duty” See Exhibit 1 which provides in part:

21 “4.2.1 Full time duty. The Chief Executive Manager shall work  
 22 full time and exclusively for the Company. The Chief Executive  
 23 Manager shall not maintain any outside occupations, shall not have  
 24 directly or indirectly any interest in any other business the shares  
 25 of which are not quoted in public stock exchange, and shall not  
 26 engage in any other endeavors except charitable endeavors which  
 27 in the Members’ exclusive discretion do not substantially interfere  
 28 with the carrying-out of the Chief Executive Manager’s duties and  
 responsibilities at the Company”

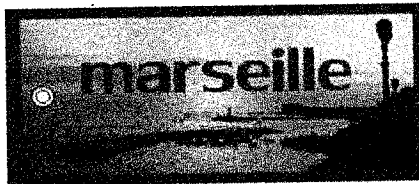


4.13 On or about December 23, 2008, KISCHE registered a trademark "KISCHE" with the USPTO, serial number 86145258 (hereinafter referred to as the "258 MARK") with a commercial classification in women's apparel, specifically, "clothing, brassieres, corsets, dressing gowns...skirts...sweaters." See Exhibit 2, which provides in part:

# KISCHE

<b>Word Mark</b>	<b>KISCHE</b>
<b>Goods and Services</b>	IC 025. US 022 039. G & S: aprons, bandanas, beach shoes, belts, berets, bodices, boots for sports, braces for clothing, brassieres, breeches for wear, camisoles, chemisettes, coats, collars, collar protectors, combinations, corselets, corsets, dressing gowns, footwear, fur stoles, garters, gloves, gowns, half-boots, hats, hosiery, jerseys, jumpers, mantillas, mittens, muffs, neckties, pants, pelerines, petticoats, pullovers, pyjamas, scarves, shawls, shirts, shoes, shower caps, singlets, skirts, sleep masks, slippers, slips, socks, sports jerseys, stockings, suits, sun visors, suspenders, sweaters, swimsuits, tee-shirts, tights, top hats, topcoats, trouser, turbans, underpants, underwear, vests. FIRST USE: 20070000. FIRST USE IN COMMERCE: 20070000
<b>Owner</b>	(REGISTRANT) Kische USA LLC LIMITED LIABILITY COMPANY WASHINGTON 18538 142nd Avenue NE Seattle WASHINGTON 98072
<b>Attorney of Record</b>	Kevin S. Costanza
<b>Prior Registrations</b>	3550395
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

4.14 On or about September 14, 2010, KISCHE registered a trademark "Marseille" with the USPTO, serial number 85129374 (hereinafter referred to as the "374 MARK") with a commercial classification in women's apparel, specifically, "women's tops... dresses...skirts..." See Exhibit 3, which provides in part:



<b>Word Mark</b>	<b>MARSEILLE</b>
<b>Goods and Services</b>	IC 025. US 022 039. G & S: Capri pants; Cargo pants; Dresses; Evening dresses; Gloves for apparel; Halter tops; Knit dresses; Knit tops; Leather pants; Leather shirts; Leather skirts; Leotards and tights for women, men and children of nylon, cotton or other textile fibers; Men's and women's jackets, coats, trousers, vests; Men's suits, women's suits; Shirts; Skirts and dresses; Tank tops; Tube tops; Women's tops, namely, camis; Woven bottoms; Woven dresses; Woven skirts; Woven tops. FIRST USE: 20100620. FIRST USE IN COMMERCE: 20100810



1 **Owner** (REGISTRANT) Kische USA LLC LIMITED LIABILITY COMPANY WASHINGTON 12826 NE 178th Street,  
Ste. B2 Woodinville WASHINGTON 98072

2 (LAST LISTED OWNER) JD STELLAR LLC LIMITED LIABILITY COMPANY WASHINGTON 18538 142nd  
Avenue NE Woodinville WASHINGTON 98072

3 **Assignment Recorded** ASSIGNMENT RECORDED

4 **Attorney of Record** Kevin S. Costanza

5 **Description of Mark** The color(s) light gray, dark gray, orange, red, black and white is/are claimed as a feature of the mark. The  
mark consists of the wording "MARSEILLE" in dark gray overlaying a design element of sunset in light  
orange, dark orange and gray. To the right is a coastal city scene with lamppost and the sea. A dark gray  
rectangular border outlines the mark.

6 **Type of Mark** TRADEMARK

7 **Register** PRINCIPAL

8 **Live/Dead Indicator** LIVE

9 4.15 ALI SIMSEK hired DIANE WALKER to work for KISCHE. He also hired  
10 several other employees.

11 4.16 On October 11, 2013, while still employed by KISCHE, ALI SIMSEK and  
12 DIANE WALKER formed JD STELLAR, a Washington limited liability company.  
13 According to the Washington Secretary of State, JD STELLAR LLC is governed by ALI  
14 JAMES SIMSEK of 3611 232<sup>nd</sup> St. SE, Bothell WA 98021; and DIANE WALKER of 12006  
15 NE 206<sup>th</sup> Pl, Apartment B-302, Bothell WA 98011. See Exhibit 4.

#### 16 Governing Persons

17 Title	Name	Address
18 Manager	SIMSEK, ALI JAMES	3611 232ND ST SE BOTHELL, WA 98021
19 Manager	WALKER, DIANE	12006 NE 206TH PL APT B-302 BOTHELL, WA 98011

21 4.17 On November 27, 2013, while ALI SIMSEK and DIANE WALKER were still  
22 employed by KISCHE and receiving salary, as members of JD STELLAR, registered the  
23 trademark "Dantelle" with the USPTO with serial number 86131124 (hereinafter referred to  
24 the "124 MARK") with a commercial classification in women's apparel, specifically,  
25 "Women's clothing, namely, tops, skirts, dresses and sweaters." See Exhibit 5, which  
26 provides in pertinent part:  
27  
28

# DANTELE

<b>Word Mark</b>	<b>DANTELE</b>
<b>Goods and Services</b>	IC 025. US 022 039. G & S: Women's clothing, namely, tops, skirts, dresses and sweaters. FIRST USE: 20140210. FIRST USE IN COMMERCE: 20140210
<b>Owner</b>	(REGISTRANT) JD Stellar LLC LIMITED LIABILITY COMPANY WASHINGTON 18538 142nd Avenue NE Woodinville WASHINGTON 98072
<b>Attorney of Record</b>	Kevin S. Costanza
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

4.18 On November 27, 2013, while ALI SIMSEK and DIANE WALKER were still employed by KISCHE and receiving salary, as members of JD STELLAR, registered the trademark "Dantelle" with the USPTO with serial number 86131124 (hereinafter referred to the "124 MARK") with a commercial classification in women's apparel, specifically, "Women's clothing, namely, tops, skirts, dresses and sweaters." See Exhibit 5, which provides in pertinent part:

# DANTELE

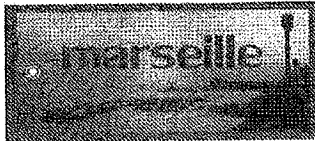
<b>Word Mark</b>	<b>DANTELE</b>
<b>Goods and Services</b>	IC 025. US 022 039. G & S: Women's clothing, namely, tops, skirts, dresses and sweaters. FIRST USE: 20140210. FIRST USE IN COMMERCE: 20140210
<b>Owner</b>	(REGISTRANT) JD Stellar LLC LIMITED LIABILITY COMPANY WASHINGTON 18538 142nd Avenue NE Woodinville WASHINGTON 98072
<b>Attorney of Record</b>	Kevin S. Costanza
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

4.19 On March 13, 2014, ALI SIMSEK and DIANE WALKER, while still employed by KISCHE and receiving a salary, using the services of attorney Kevin COSTANZA, assigned KISCHE's '374 MARK trademark to their own company, JD STELLAR LLC. ALI SIMSEK did so without consulting or obtaining written approval from Mr. Uysal as the sole member of KISCHE. Kevin COSTANZA used his status as a registered patent attorney with

the USPTO to file the assignment. Mr. COSTANZA did not confer with his client, KISCHE, before filing the assignment. See Exhibit 6, which provides in pertinent part:

ASSIGNMENT

WHEREAS, Kische USA LLC has adopted and used in its business the trademark:



which is registered in the United States Patent and Trademark Office under Registration No. 3,961,455 and which issued May 17, 2011;

WHEREAS, JD Stellar LLC, a limited liability company of the State of Washington having a place of business at 12826 Northeast 178th Street, Suite B2, Woodinville, Washington 98072, is desirous of acquiring said trademark and ownership of said registration.

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN:

Be it known that for and in consideration of One Dollar (\$1.00) and other good and valuable consideration to it paid, the receipt and sufficiency of which are hereby acknowledged, said Kische USA LLC, by these presents, does sell, assign and transfer unto JD Stellar LLC the entire right, title and interest in and to said trademark, registration and the goodwill of the business in connection with which said trademark is used and all claims for damages by reason of past infringement of the trademark and registration, and the right to sue for and collect such damages.

3/13/2014

Date

Ali Simsek

4.20 On or about March 15, 2015, ALI SIMSEK terminated his relationship with KISCHE.

4.21 ALI SIMSEK and DIANE WALKER continued to operate their own business JD STELLAR by purchasing, shipping, importing and distributing identical apparel and goods that were being sold by KISCHE.

4.22 ALI SIMSEK and DIANE WALKER operated JD STELLAR while employed by, earning a salary from, and while acting as a trusted fiduciary for KISCHE. Upon further information and belief, after learning of the supply chain and business relationships involved in KISCHE's business, it is believed that ALI SIMSEK began to purposefully dissuade KISCHE's then-current customers from purchasing from KISCHE by relaying inaccurate or

1 false information about the KISCHE's brands to customer's purchasing agents, which resulted  
 2 in lost contracts and business for KISCHE. After setting up JD STELLAR, and while still  
 3 employed by KISCHE, ALI SIMSEK and DIANE WALKER purposefully delayed payments  
 4 to clothing manufacturers in order to tarnish the reputation of KISCHE. It is believed that ALI  
 5 SIMSEK and DIANE WALKER, through purposeful tarnishment of reputation and standing  
 6 diverted the retailers and supply lines from conducting business with KISCHE brands to JD  
 7 STELLAR and its brands while gainfully employed as a fiduciary of KISCHE.

8  
 9 4.23 Around the time of termination from KISCHE, ALI SIMSEK and DIANE  
 10 WALKER without permission, stole equipment, furniture, computers, servers, cameras, and  
 11 thousands of pieces of clothing among other items of value. Also around this time of  
 12 termination, ALI SIMSEK and DIANE WALKER made payments on behalf of KISCHE to  
 13 JD STELLAR in an amount exceeding \$20,000 USD for unknown reasons without approval  
 14 from the sole member of KISCHE.

15 4.24 Around the time of termination from KISCHE, ALI SIMSEK and DIANE  
 16 WALKER stole the clothing designs from KISCHE and began selling them under their own  
 17 entity, JD STELLAR and its different brand names "DANTELE" and "MARSEILLE".

18 **V. COUNT 1: UNFAIR COMPETITION UNDER LANHAM ACT § 43**

19 5.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 4.23 herein.

20 5.2 Defendants stole clothing designs belonging to KISCHE and sold clothing with  
 21 identical designs under the different brands of "DANTELE" and "MARSEILLE".

22 5.3 Defendants use of KISCHE's marks to promote, market or sell its products or  
 23 services in direct competition with KISCHE's products and services constitutes Unfair  
 24 Competition pursuant to 15 U.S.C. § 1125(a). Defendants' use of KISCHE's brand, clothing  
 25 design, likeness, and marks is likely to cause confusion, mistake and deception among  
 26 consumers. Defendants' unfair competition has caused and will continue to cause damage to  
 27  
 28

1 KISCHE, and is causing irreparable harm to KISCHE for which there is no adequate remedy  
2 at law.

3 5.4 As a proximate result of the Defendant's actions and/or failure to act, Plaintiff  
4 has suffered damages in an amount to be proven at trial.

5 **VI. COUNT 2: FALSE DESCRIPTION**

6 6.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 5.4 herein.

7 6.2 Defendants' wrongful use of KISCHE's marks by blatantly converting and  
8 copying KISCHE's trademark in the clothing and apparel industry, which is a direct consumer  
9 product is highly likely to cause mistake of fact as to the affiliation, connection or association  
10 of KISCHE's brands and is just as likely to confuse and cause consumers to mistake the  
11 origin, sponsorship or approval by KISCHE of the Defendants' products.

12 6.3 KISCHE avers that Defendants' use of the marks "Kische", "Marseille" and  
13 "Dantelle" comprises a false description or representation of Defendants' business or products  
14 under 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act).

15 6.4 As a proximate result of the Defendants actions and/or failure to act, Plaintiff  
16 has suffered damages in an amount to be proven at trial.

17 **VII. COUNT 3: COMMON LAW PASSING OFF**

18 7.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 6.4 herein.

19 7.2 Defendant's stole clothing designs belonging to KISCHE and sold the clothing with  
20 identical designs under a different brand "DANTELE" and "MARSEILLE".

21 7.3 KISCHE alleges that Defendant's wrongful use of KISCHE's trademarks and brand  
22 causes injury to and creates a likelihood of injury to KISCHE's brand by selling similar  
23 if not identical products through another name in an attempt to deceive and mislead  
24 customers into believing the JD STELLAR brand was KISCHE's brand. KISCHE's  
25 brand and goodwill with customers was taken by JD STELLAR when the public was  
26  
27  
28

1 deceived by identical or very similar products were sold to the same manufacturing,  
2 shipping, wholesale and retail channels.

3 7.4 As a proximate result of the Defendant's actions and/or failure to act, Plaintiff has  
4 suffered damages in an amount to be proven at trial.

5 **VIII. COUNT 4: COMMON LAW MISAPPROPRIATION OF**  
6 **TRADE SECRET INFORMATION**

7 8.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 7.4 herein.

8 8.2 Numerous trade secrets were shared with Defendants through the course of their  
9 employment at KISCHE. KISCHE, through use of both employment contract and other brand  
10 markings on documents and files made it clear that these trade secrets were to be kept secret  
11 and held closely to the business. Some of these trade secrets include names of business  
12 clients, customers, suppliers, businesses, affiliates, or others associated with the specific  
13 supply chain for the clothing and apparel industry. Also included in trade secrets were  
14 KISCHE's manufacturing methods, clothing designs, clothing design patterns, fabrication,  
15 dying and stitching techniques as well. Further, the trade secret information also included the  
16 associated phone numbers, addresses, email addresses, and other contact information  
17 including event schedules, contracts, quotes, pricing, margins, and other business information  
18 for each individual business contact.

19 8.3 The aforementioned trade secret information, among others, was  
20 misappropriated by Defendants from KISCHE and taken for the immediate use and profit for  
21 JD STELLAR. Defendants capitalized on this trade secret information to persuade those  
22 particular clients, supply lines, distributors and manufactures to switch brands from KISCHE  
23 to JD STELLAR.

24 8.4 As a proximate result of the Defendant's actions and/or failure to act, Plaintiff  
25 has suffered damages in an amount to be proven at trial.

26 **IX. COUNT 5: COMMON LAW INJURY TO BUSINESS REPUTATION**



1 9.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 8.4 herein.

2 9.2 KISCHE alleges that Defendants' wrongful use of KISCHE's trademarks  
3 causes injures to and creates a likelihood of injury to KISCHE's business reputation because  
4 persons encountering KISCHE and its brands and services will believe that KISCHE is  
5 affiliated with or related to or has the approval of Defendants, and any adverse reaction by the  
6 public to Defendants and the quality of its products and the nature of its business will injure  
7 the business reputation of KISCHE and the goodwill that it enjoys in connection with its  
8 marks.

9  
10 9.3 As a proximate result of the Defendant's actions and/or failure to act, Plaintiff  
11 has suffered damages in an amount to be proven at trial.

12 **X. COUNT 6: COMMON LAW BREACH OF CONTRACT**

13 10.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 9.3 herein.

14 10.2 Plaintiff and Defendant ALI SIMSEK formed a contract for employment  
15 whereby KISCHE hired Defendant, ALI SIMSEK, as an employee.

16 10.3 Defendant ALI SIMSEK breached that contract for many reasons, some of  
17 which include: not employing KISCHE's property assets for the exclusive benefit of  
18 KISCHE, for not working exclusively for KISCHE and for not receiving prior written  
19 approval to sell or acquire brand assets which is not in the ordinary course of business.

20 10.4 As a proximate result of the Defendant's actions and/or failure to act, Plaintiff  
21 has suffered damages in an amount to be proven at trial.

22 **XI. COUNT 7: COMMON LAW BREACH OF FIDUCIARY DUTIES**

23 11.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 10.4 herein.

24 11.2 The Defendant, ALI SIMSEK, had a duty of loyalty to KISCHE. The Defendant  
25 was employed by KISCHE as a Manager and had a fiduciary duty of loyalty to the company  
26 to conduct themselves in the best interests of the company.

27 11.3 Defendant breached his duty of loyalty by self-dealing. Defendant registered the  
28



1 mark "Dantelle", a line of business in direct competition with KISCHE brands, under the  
 2 name of Defendant's personal business, JD STELLAR, while still employed by KISCHE.

3 11.4 The Defendant, ALI SIMSEK, had a duty of Good Faith as the Chief Executive  
 4 Manager of KISCHE.

5 11.5 The Defendant breached this duty of Good Faith in not providing notice to  
 6 Plaintiff of registering a competitive trademark, "Dantelle", assigning the trademark,  
 7 "Marseille" to his own company, JD STELLAR, a competitor, and copying the design, style,  
 8 and appearance of KISCHE apparel in Defendant's own business, JD STELLAR.

9 11.6 Defendant had a duty of care to KISCHE. Defendant was put in a position of  
 10 authority to make decisions on behalf of KISCHE which carries with it a fiduciary duty of  
 11 care to make business decisions which a reasonably prudent business person would.

12 11.7 Defendant breached that duty of care by selling a profitable brand "Marseille"  
 13 for \$1.00. The KISCHE brand "Marseille" was sold to Defendant's personal company, JD  
 14 STELLAR, for \$1.00 at a time when the value of the "Marseille" brand was worth  
 15 considerably more, and no reasonably prudent business person would have made such  
 16 decision.

17 11.8 As a proximate result of the Defendant's actions and/or failure to act, Plaintiff  
 18 has suffered damages in an amount to be proven at trial.

## 19 **XII. COUNT 8: INTENTIONAL INTERFERENCE**

### 20 **WITH CONTRACTUAL RELATIONS**

21 12.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 11.8 herein.

22 12.2 At the time of the conduct at issue, KISCHE had a business relationship and  
 23 expectancy with many major retail apparel stores, such as T.J. Maxx and Nordstrom, with a  
 24 probability of future economic benefit for KISCHE.

25 12.3 Defendants ALI SIMSEK and DIANE WALKER knew of the existence of that  
 26 business relationship and expectancy from their employment with KISCHE.  
 27  
 28

1           12.4 Defendants intentionally induced or caused the termination of the business  
2 relationship or expectancy when they spoke disparagingly about KISCHE behind closed doors  
3 with apparel store and supply line company management.

4           12.5 Defendants' interference was for an improper purpose to divert sales and profit  
5 from KISCHE to their own business, JD STELLAR, while Defendant was employed by  
6 KISCHE.

7           12.6 As a proximate result of the Defendants' actions and/or failure to act, Plaintiff  
8 has suffered damages in an amount to be proven at trial.  
9

10                   **XIII. COUNT 9: COMMON LAW CONVERSION OF**  
11                   **TRADEMARK AND/OR BRAND**

12           13.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 12.6 herein.

13           13.2 The Defendants assigned the '374 MARK for "Marseille" from KISCHE to JD  
14 STELLAR without permission or authority to do so by Plaintiff.

15           13.3 The Defendant's actions of unauthorized conversion of KISCHE's Property and  
16 unauthorized assignment of the '374 MARK to KISCHE's competitor, JD STELLAR, have  
17 caused injury to the Plaintiff in its business and property.

18           13.4 As proximate cause of the foregoing, Plaintiff suffered damages allowed by law  
19 or otherwise; all in an amount to be proven at trial.

20                   **XIV. COUNT 10: WASHINGTON STATE BUSINESS**  
21                   **OPPORTUNITY FRAUD ACT UNDER 19.110 RCW**

22           14.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 13.4 herein.

23           14.2 The Defendants' actions to make sale and assignment of at least '374 MARK to  
24 a separate entity have committed fraud on Plaintiff for not disclosing nor seeking approval for  
25 the sale of important business assets such as one or more trademark registration. The  
26 Defendants' nondisclosure of one or more sales amounts to fraud on the Plaintiff because the  
27 failure to notify caused KISCHE to sell at least one of its brand names.  
28

14.3 As proximate cause of the foregoing, Plaintiff suffered damages allowed by law or otherwise; all in an amount to be proven at trial.

**XV. COUNT 11: WASHINGTON STATE UNIFORM TRADE**

**SECRET ACT UNDER 19.108 RCW**

15.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 14.3 herein.

15.2 Numerous trade secrets were shared with Defendants through the course of their employment at KISCHE. KISCHE, through use of both an employment contract and other brand markings on documents and files made it clear that these trade secrets were to be kept secret. Some of these trade secrets include names of business clients, customers, suppliers, businesses, affiliates, or others associated with the specific supply chain for the clothing and apparel industry. Further, the trade secret information also included at least the associated phone numbers, addresses, email addresses, and other contact information including event schedules, contracts, quotes, pricing, margins, and other business information of each of the individual business contact.

15.3 The aforementioned trade secret information, among others, was misappropriated by Defendants from KISCHE and taken for the immediate use and profit for JD STELLAR. Defendants capitalized on this trade secret information to persuade those particular clients, supply lines, distributors and manufactures to switch brands from KISCHE to JD STELLAR.

15.4 As a proximate cause of the foregoing, Plaintiff suffered damages allowed by law or otherwise, all in an amount to be proven at trial.

**XVI. COUNT 12: CIVIL RACKETEER INFLUENCED AND**

**CORRUPT ORGANIZATIONS ACT (RICO) 18 U.S.C. §1964**

16.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 15.4 herein.

16.2 ALI SIMSEK and DIANE WALKER have sold for a profit stolen clothing, designs and marks of their prior employer, KISCHE. This stolen apparel was transported from

1 international manufactures through customs and into the United States and was sold so as to  
 2 appear as the brand and mark of his former employer, KISCHE. ALI SIMSEK embezzled  
 3 money from his former employer by taking money which he did not earn, stealing apparel,  
 4 designs and marks and using the money and stolen goods to start up an identical business, JD  
 5 STELLAR to confuse and deceive customers into believing that the clothing was KISCHE  
 6 clothing.

7  
 8 16.3 As a proximate cause of the foregoing, Plaintiff suffered damages allowed by  
 9 law or otherwise, all in an amount to be proven at trial.

10 **XVII. COUNT 13: ATTORNEY MALPRACTICE - NEGLIGENCE**

11 17.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 16.3 herein.

12 17.2 Defendant KEVIN COSTANZA has committed Attorney Malpractice through  
 13 his negligence in the handling of affairs with his client, KISCHE USA LLC, in which he  
 14 failed to notify or consult with his client before assisting Defendant ALI SIMSEK in  
 15 converting KISCHE's valuable intellectual property, including the Dantelle trademark, as well  
 16 as other valuable intellectual property, to Defendant ALI SIMSEK.

17 17.3 As a direct and proximate cause of the foregoing, Plaintiff suffered damages  
 18 allowed by law or otherwise, all in an amount to be proven at trial.

19 **XVIII. COUNT 14: ATTORNEY MALPRACTICE – BREACH OF FIDUCIARY DUTY**

20 18.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 17.3 herein.

21 18.2 Defendant KEVIN COSTANZA has committed Attorney Malpractice by  
 22 breaching his fiduciary duty to his client, KISCHE, when he failed to communicate with his  
 23 client before assisting Defendant ALI SIMSEK in converting KISCHE's valuable intellectual  
 24 property, including the Dantelle trademark, as well as other valuable intellectual property, to  
 25 Defendant ALI SIMSEK. Defendant KEVIN COSTANZA also breached his fiduciary duty to  
 26 his client, KISCHE, when he acted in the interest of one client, Defendant ALI SIMSEK, to  
 27 the detriment of his client KISCHE.  
 28

18.3 As a proximate cause of the foregoing, Plaintiff suffered damages allowed by law or otherwise, all in an amount to be proven at trial.

### **XIX. DAMAGES**

19.1 Plaintiff hereby alleges and incorporates paragraphs 1.1 through 18.3 herein.

19.2 As a proximate cause of the foregoing, Plaintiff suffered damages allowed by law or otherwise, all in an amount to be proven at trial.

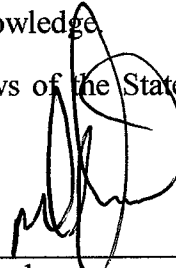
### **XX. CERTIFICATION**

I, Mehmet Uysal, declare:

I am the owner and sole member of KISCHE USA LLC, and I have been authorized to make this verification on behalf of KISCHE USA LLC.

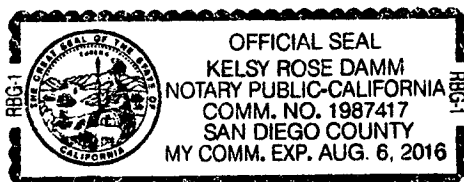
I have read the foregoing Verified Complaint ("Complaint"), after having its contents translated to Turkish from English, and have personal knowledge of the contents in paragraphs 1.1 through 19.2. The same is true to the best of my knowledge.

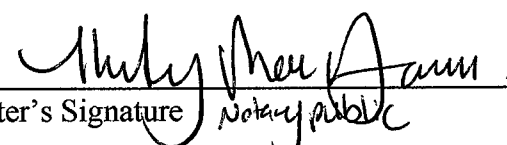
I declare under penalty of perjury under the laws of the State of Washington that the factual allegations in the Complaint are true and correct.

  
Mehmet Uysal

I, Kelsy Rose Damm, a Noter of San Diego, California do hereby certify that Mehmet Uysal appeared before me this day, acknowledged that he is the owner and sole member of KISCHE USA, LLC, and has sworn to and subscribed this Verification in my presence the foregoing.

WITNESS my hand and official seal or stamp, this the 25<sup>th</sup> day of January, 2016.



  
Noter's Signature

**XXI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Mehmet Uysal and KISCHE USA LLC, prays for judgment against the Defendant as follows:

21.1 Compensatory consequential, incidental, and statutory damages including general and special damages, as proven at the time of trial, with re-judgment and post-judgment interest thereon;

21.2 For return of all stolen intellectual property, including trademarks, domain names, confidential business information, trade secret, and any other intellectual property the court deems was converted from the plaintiff;

21.3 For Plaintiff's reasonable attorney fees incurred herein, as allowed by law;

21.4 For Plaintiff's costs and disbursements herein to be taxed;

21.5 That the court issue permanent injunctive relief against Defendants, and that Defendants, their agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with Defendants, be enjoined and restrained from:

21.5.1 Imitating, copying or making any other infringing use or infringing distribution of the apparel and/or materials protected by KISCHE's intellectual property or brand;

21.5.2 Manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any apparel, item or thing bearing any simulation, reproduction, counterfeit, copy or colorable imitation of the apparel, item or thing protected by KISCHE's intellectual property or brand;

21.5.3 Using any simulation, reproduction, counterfeit, copy or colorable imitation of KISCHE's intellectual property or brand in connection with the manufacture, assembly, production, distribution, offering for distribution, circulation, sale, offering for sale,



import, advertisement, promotion or display of any apparel, item and or thing not authorized by KISCHE;

21.5.4 Using any false designation of origin or false or misleading description or false or misleading representation that can or is likely to lead the trade or public erroneously to believe that any apparel, item or thing has been manufactured, assembled, produced, distributed, offered for distribution, circulation, sold, offered for sale, imported, advertised, promoted, displayed, licensed, sponsored or authorized by or for KISCHE, when such is not true in fact;

21.5.5 Using reproductions, counterfeits, copies or colorable imitations of KISCHE's protected apparel and other materials in the distribution, offering for distribution, circulating, sale, offering for sale, advertising, importing, promoting or displaying of any merchandise not authorized or licensed by KISCHE;

21.5.6 Using any names, logos, or other variations thereof, of any of KISCHE's brands in any of the Defendant's uses in commerce;

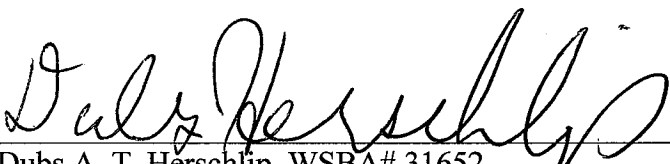
21.5.7 Engaging in any other activity constituting an infringement of any of KISCHE's trademarks or intellectual property; and

21.5.8 Assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs 20.5.1 through 20.5.7.

21.6 For such other and further relief as the Court deems just and reasonable; and

21.7 For leave to amend this complaint as justice and equity make appropriate.

Dated this 3<sup>rd</sup> day of February, 2016.

  
Dubs A. T. Herschlip, WSBA# 31652  
Attorney for Plaintiff, KISCHE USA LLC